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December 14, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

**Re: In the Matter of Implementation of the Cable Television
Consumer Protection and Competition Act of 1992 - Cable
Home Wiring - MM Docket No. 92-260**

Reply Comments of Comcast Corporation

Dear Ms. Searcy:

Enclosed are an original and nine copies of Reply Comments submitted by Comcast Corporation in connection with the above-referenced Docket.

Very truly yours,



THOMAS R. NATHAN
Deputy General Counsel

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection) MM Docket No. 92-260
and Competition Act of 1992)
)
)
Cable Home Wiring)

REPLY COMMENTS OF
COMCAST CORPORATION

Comcast Corporation ("Comcast") hereby submits reply comments in response to the Notice of Proposed Rulemaking adopted by the Federal Communications Commission in the above-captioned proceeding. Comcast subsidiaries and affiliates serve over 2.5 million cable television subscribers in the United States.

I. INTRODUCTION AND SUMMARY

Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act") presents the Commission with the limited task of establishing a mechanism by which cable subscribers may purchase wiring within their homes upon voluntary termination of cable service.¹ In fashioning such a rule there is no need, as some commenters have suggested, for the Commission to intrude upon state law. Preemption of state law is unnecessary and ill-advised since it will result in a massive shift in tax liabilities. Congress' objective is readily achieved by requiring

¹Comcast concurs with TCI and other commenters who state there is no logical or legal reason why the Commission's rule should not be applicable to all video program distributors who install home wiring.

that where a subscriber does not already own the wiring under state law, that he be permitted to acquire it upon termination of service.

Only property owners should be permitted to purchase wiring and their interest should be limited to wiring contained inside the home or individual dwelling units. The Commission's rule should delineate the responsibilities and limitations which accompany an acquisition of internal wiring and must clarify that ownership of wiring does not entitle a subscriber to connect that wiring to television receivers without authorization from the service provider.

II. THE COMMISSION SHOULD NOT PREEMPT STATE LAW

As the Commission notes in the Notice of Proposed Rulemaking, the ownership of cable wiring has profound property tax implications. In property tax cases, the central issue is whether the housedrop is a fixture, and thus assessable to the homeowner, or personal property, and thus assessable to the cable operator. This issue has received considerable attention in administrative and judicial proceedings because housedrops (including both internal and external wiring) typically constitute 8% to 13% of the total value of a cable operator's tangible assets. Tens of millions of property tax dollars each year hinge on this issue.

To our knowledge, there have been over a dozen such cases litigated, with differing results. Comcast believes that all of the property tax cases cited in the initial round of comments, as well as others, are consistent in that they all utilize the common

law three part fixtures analysis in determining who is the owner, and thus who is assessable, for property tax purposes. This fixtures analysis is a universally understood framework for determining cable home wiring ownership. All of the decisions turn on what the cable company's intention was at the time of installation.²

It is neither necessary nor wise for the Commission to attempt to reconcile these decisions or to establish a uniform rule on ownership at the outset of service.³ It is imprudent because such a rule would affect the outcome of property tax litigation now being conducted and could result in massive shifts in tax liability.⁴ It is unnecessary because the Commission can achieve

²See e.g. Communication Properties v. Lindley, Case No. 77-C-60 (Ohio Bd. Tax. App. 1978). Comcast specifically disagrees with the comments of Liberty Cable Company, Inc., page 5, insofar as Liberty states that cable home wiring can be declared a fixture upon installation, since this is the "intent of both the cable operator and the resident." The case law instructs that the particular facts and circumstances of each individual case dictates whether or not the cable home wiring is deemed a fixture.

³Comcast disagrees with those commenters who suggest that the post-detariffing policies concerning internal telephone wiring are readily transferrable to cable home wiring and would have no tax impact if adopted here. Telephone companies are generally assessed for property tax purposes under state statutory schemes which are fundamentally different from the property tax rules applicable to cable operators. Thus, the Commission should be cautious in drawing analogies.

⁴A consideration that does not appear to have been addressed at all in the comments is the federal and state income tax consequences of a Commission rule affecting the ownership of the internal wiring in a subscriber's home. Some cable operators capitalize all costs associated with the housedrop (both interior and exterior) and depreciate those costs over seven years for federal income tax purposes, and a similar life span for state income tax purposes. If the Commission were to rule that title to the interior portion of the housedrop passes immediately to the

its goal by simply requiring that cable operators explicitly notify subscribers at the time of installation whether the company intends to own the wiring or convey it to the subscriber. In the former case the Commission can require the Company to offer it for sale at the conclusion of service at a reasonable price.⁵ In the latter case where operators, like Comcast, convey the wiring upon installation, no Commission action is required at all.

Congress' mandate to the Commission and existing state fixture law are compatible. Accordingly, the Commission should defer to state law for the threshold determination of who initially owns the internal wiring. Any other rule will frustrate the legitimate tax plans and expectations of parties who have conducted themselves according to well established law.

III. THE COMMISSION SHOULD NOT PERMIT SUBSCRIBERS IN MULTIPLE DWELLING UNITS TO PURCHASE COMMON WIRING

Access to multiple dwelling units is generally obtained through an agreement with the building owner or property owner's association. In some cases the owner wishes to obtain service for

subscriber upon installation or upon termination of service, then a corresponding tax deduction would be immediately available to the cable operator for the undepreciated cost of the housedrop. Based upon the historical churn experience by Comcast, we believe that the amount of lost federal and state income tax revenues would be substantial when comparing the present value of the tax benefit from the immediate expensing of those costs compared to the tax benefit of the depreciation of those costs over a fixed period of time.

⁵Comcast agrees with those commenters who propose that any compelled transfer of wiring without just compensation to the operator would be an unconstitutional taking of private property.

all units, in which case it will negotiate a bulk contract with the service provider. Where service is provided pursuant to a bulk contract the owner commonly includes some or all of these charges in the resident's monthly charges or rent. In other cases the owner grants the operator a right of entry to the property and the operator enters into individual contracts with the residents. In either case the operator must expend substantial sums to construct its plant vertically through risers and throughout building corridors in order to be able to serve all units. This plant, external to individual dwelling units, is commonly referred to as common wiring.

The legislative history of the Act demonstrates that Congress did not intend to authorize the purchase of all internal wiring by cable subscribers, but only the wiring within the subscriber's individual house or dwelling unit.⁶ The Commission's rule should therefore provide that subscribers do not have the option of purchasing any equipment or wiring which constitutes part of the common wiring. The rule should also clarify that subscribers who do not own the walls of their dwelling are not entitled to purchase any wiring contained within those walls.⁷

⁶"This section deals with internal wiring within a subscriber's home or individual dwelling unit. In the case of multiple dwelling units, this section is not intended to cover common wiring within the building, but only the wiring within the dwelling unit of individual subscribers." H.R. Rep. No. 628, 102d Cong; 2d Sess. 119 (1992) (emphasis added).

⁷For instance, a condominium owner controls the walls of his residence, while a tenant does not. Similarly, residents of dormitories, military housing, prisons, hospitals and other

There are a number of sound reasons why Congress chose not to include MDU common wiring within the scope of Section 16(d). First, the purchase of common wiring would impede competition, not enhance it. Instead of fostering simultaneous competition, in which residents could freely select among all available service providers, it would create, at best, serial competition. If maximum competition is the objective, it is essential that each available operator be allowed to maintain its own plant.

Second, franchised cable operators in many states have a statutory obligation to make their service available to residents of MDUs.⁸ Permitting the purchase of common wiring would frustrate an operator's ability to comply with these statutes and the general goal of extending franchised service to all parts of the community.

Third, as several commenters have noted, in some technical configurations it is impossible to remove part of the cable loop without severing service to other subscribers served by that loop.

IV. THE COMMISSION'S RULE SHOULD ESTABLISH THE LIMITS AND RESPONSIBILITIES OF OWNERSHIP

The Commission should take this opportunity to clearly express the obligations incurred by those subscribers who acquire interior

transients should not be permitted to acquire internal wiring. While it is possible that a tenant could have liability to the property owner for damage arising from the installation or removal of wiring, the indemnification provisions of 47 USC 541(a)(2) eliminate this contingency as a justification for permitting non-owner subscribers to purchase internal wiring.

⁸See, e.g. Conn. Gen. Stat. §16-333a (Connecticut) and N.J.S.A. 48:5A-49 (New Jersey).

wiring. Comcast believes that it would be best for the rule to state that upon acquisition an individual becomes the legal owner of the wiring for all purposes. At a minimum, the rule should state that the owner of the wiring becomes responsible for the performance and maintenance of the wire as well as any property taxes associated with ownership. Of course, a purchaser should be free to transfer all or part of its responsibilities by way of a maintenance agreement. But there is nothing in the Act or its legislative history which would permit the Commission to unilaterally impose a continuing maintenance obligation on the former cable operator.⁹

While the legislative history on this point is somewhat confused,¹⁰ there can be little doubt that Congress does not intend for cable operators to be saddled with the cost of maintaining wire which it no longer uses. It is evident from Section 3 of the Act that Congress desires cable rates to reasonably reflect the costs associated in providing the particular service. The imposition of service obligations which generate no revenue is plainly

⁹The House Report provides that any rule adopted under Section 16(d) should not hinder operators from fulfilling their CLI requirements while they are providing service to the subscriber. House Report at 119. It would thus be incorrect to infer that Congress intended that an operator should continue to have these obligations once the subscriber relationship is terminated.

¹⁰The Senate report cites with approval telco post-detariffing policies whereby customers can control the wiring inside their premises and advises the Commission to guard against unnecessary wire maintenance charges. S. Rep. No. 102d Cong. 2d Sess. (1992) at 23. But under the very telco arrangements it praises the customer's choice to pay a wire maintenance charge or else assume responsibility for the expenses associated with the internal wiring.

inconsistent with this scheme. Whether it chooses to address the matter now or as part of Docket 92-266, the Commission must clarify that a cable operator is not required to bear without compensation the regulatory costs associated with plant it no longer uses and indeed, which may be used by its competitor.

Finally, the Commission should eliminate any possible misconception that may arise concerning the relationship between internal wiring and service outlets. A great deal of confusion already exists among cable consumers owing to the changes brought about by the telephone wiring detariffing decisions. Comcast is concerned that individuals may believe that by terminating cable service, purchasing the wiring, then resubscribing to cable service that they are free to split a single connection to accommodate an unlimited number of outlets. While this belief may be correct in the telephone context it is erroneous in the case of cable service. Unlike phone service, which is charged on a per line basis, cable service is charged on a per set basis. The unauthorized connection of additional sets not only deprives an operator of legitimate revenue but can degrade signal levels and cause hazardous interference. The Commission should ensure that its rule does not unintentionally encourage such behavior by making clear that ownership of internal wiring does not confer the right to connect such wiring to any receivers, absent the consent of the video programming provider.

V. CONCLUSION

For the foregoing reasons, the Commission should adopt rules which do not disturb state fixture law and which are otherwise consistent with the proposed regulations attached as Exhibit A.

Respectfully submitted,

COMCAST CORPORATION

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December 14, 1992

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cable agreements

EXHIBIT "A"

Upon initiation of cable service, a cable operator shall inform each subscriber whether or not it claims ownership of any internal wiring installed by the operator within the subscriber's premises. Every operator who claims ownership shall notify subscribers of their option to acquire the internal wiring upon voluntary termination of service by the subscriber at fair market value.

A subscriber who is the owner of internal wiring shall enjoy all of the rights and responsibilities incident to ownership.

A person who owns internal wiring may not use such wiring to receive cable television service, except as authorized by the cable operator serving the premises.

DEFINITIONS

For the purposes of this section:

- The term cable operator shall include any video program distributor.
- The term cable subscriber shall not include any person who does not own his dwelling unit.